

ORIGINAL

ILLINOIS COMMERCE
COMMISSION

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PUBLIC UTILITIES
REGULATION

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

OFFICIAL FILE

SOUTH AUSTIN COALITION COMMUNITY
COUNCIL, NORTHEAST AUSTIN ORGANI-
ZATION, NORTHWEST AUSTIN COUNCIL
and CONCERNED CITIZENS OF WEST
GARFIELD

86-0046

vs.

COMMONWEALTH EDISON COMPANY

Complaint as to Respondent's
discontinuance and abandonment
of its office at 5059 West Polk
Street, Chicago, Illinois.

OFFICIAL FILE

I.C.C. DOCKET NO. 02-0706

Exhibit No. A
SUPPLEMENTAL

Witness

Date 10/07/04 Recorder TR

MOTION TO DISMISS COMPLAINT

Commonwealth Edison Company ("Edison" or the "Com-
pany") hereby moves this Commission to dismiss the complaint
filed on February 12, 1986, in the above-captioned matter by
South Austin Coalition Community Council, Northeast Austin
Organization, Northwest Austin Council, and Concerned Citizens
of West Garfield (collectively, "Complainants"). In support
of its motion, the Company states as follows:

1. Complainants allege in Count I of their
complaint that members of their organizations are residential
customers of the Company who have an interest in the main-
tenance of the Edison office at 5059 West Polk Street,
Chicago, Illinois ("Polk Street office"), and that the
Company plans to close the Polk Street office. Complainants

further allege that the Polk Street office is a "service" within the meaning of Section 3-115 of the Public Utilities Act ("Act"), and that the Company has failed to seek necessary approval pursuant to Section 8-508 of the Act for abandonment or discontinuance of a service.

2. In Count II, Complainants repeat their allegations regarding their interest in the Polk Street office, and further allege that closing the Polk Street office would violate Sections 8-101 and 8-501 of the Act because it would threaten the safety and health of, and create discomfort and inconvenience for, the Company's customers.

3. Illinois courts have consistently found "service" to include only those activities, facilities, or apparatus physically involved in the provision of the service for which a utility is, or should be, certificated. E.g., New Landing Utility, Inc. v. Commerce Commission, 58 Ill. App.3d 868, 873 (2d Dist. 1978) (sewer and water lines "would fall within the [Act's] broad definition of service"); Private Tele-Communications, Inc. v. Commerce Commission, 53 Ill. App.3d 16 (1st Dist. 1977) (one-way paging system is a service); Illinois Bell Tel. Co. v. Miner, 11 Ill. App.2d 44, 62 (2d Dist. 1956) (telephone directory is a service because it is "an integral part of the equipment actually used in the transmission of telephone service.") Since the Polk

Street office is not an integral part of the equipment used in the generation, transmission, or distribution of electricity, it is not a service within the meaning of the Act.

4. The decision to consolidate the operations at the Polk Street office with the operations of other offices is a business decision not demanding of Commission review. A similar situation confronted the Illinois Supreme Court in Dixon v. Pitcairn, 362 Ill. 213 (1935). A railroad company discontinued its full-time agency at Manville, Illinois, and had an agent at a nearby agency handle the Manville business. Though still receiving rail service, several Manville residents complained. The Commission ordered the railroad to reinstate the full-time agent. The Supreme Court reversed:

While "service," in Section 10 [now Section 3-115] of the Public Utilities Act, is given its broadest meaning and includes facilities and commodities furnished, still this section cannot be construed to cover such changes in the method of conducting business.

362 Ill. at 217.

5. If Complainants' interpretation of "service" were accepted, this would mean that each time a utility wished to make a change in one of its business offices, e.g., the hours the business office is open, the telephone system used there, or the procedures used to handle customer calls, it would need to seek Commission approval since all such decisions impact "service." Given the number of such

decisions which utilities make on a daily basis, the Commission would be flooded with petitions and hearings. Obviously, the legislature never intended such a result, or such an intrusion into the managerial affairs of a utility. It has long been recognized in Illinois that:

Extensive as the powers granted to the Commission are, they do not take away from the corporation its power of control upon a question of financial policy. The discretion of a utility commission cannot override the discretion of the officers of the corporation in the management of its affairs.

Public Utilities Comm'n. v. Springfield Gas & Electric Co., 291 Ill. 209, 232 (1921). See Lowden v. Commerce Comm'n., 376 Ill. 225, 233 (1941) ("management, except as limited by the Public Utilities Act, remains in the utility").

Moreover, the Commission has traditionally deferred to utility management on questions of utility business office location. Numerous utility business office relocations have occurred over the years. The Company is aware of no instance in which the Commission required a utility to seek approval for such a decision.

6. The health, safety and convenience of Edison's customers will not be adversely affected by a consolidation of the Polk Street office into other offices. As stated in the attached Affidavit of Robert J. Manning, Vice President for Division Operations, the Polk Street office will not be

closed until the end of this year and not until alternative arrangements are made to provide the same or a better level of service to the customers in the vicinity of the Polk Street office. The consolidation will not affect the size or response time of crews sent to customers' residences to handle problems with electric service.

7. The Company does not believe that the consolidation of its business offices will inconvenience its customers. Even if there were some inconvenience to a group of customers, however, "the Supreme Court has repeatedly held that it is the interests of the public as a whole, rather than the interests of a smaller group of individuals, which are to be protected [under the Act]." Village of Hillside v. Commerce Comm'n., 111 Ill. App.3d 25, 433 N.E.2d 710, 715-16 (1st Dist. 1982). Ill. Cent. R. Co. v. Commerce Commission, 74 N.E.2d 526 (1947); Yowell v. Cleveland C., C. & St. L. Ry. Co., 195 N.E. 667 (1935); O'Keefe v. Chicago Rys. Co., 188 N.E. 815 (1933); Roy v. Commerce Commission, 153 N.E. 648 (1926).

Moreover, consolidating the Polk Street office operations with the operations at other offices will result in more economical operations which is consistent with good business practice. As the Supreme Court has stated: "[G]ood business management dictates that economies should be effected wherever practicable, especially where . . . there will be no substantial curtailment of its services to

the public." Ill. Cent. R. R. Co. v. Commerce Commission,
375 Ill. 585 (1941).

WHEREFORE, for the foregoing reasons, the complaint
is insufficient and should be dismissed as a matter of law.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By 
Its Attorneys

Paul F. Hanzlik
Christopher W. Flynn
ISHAM, LINCOLN & BEALE
Three First National Plaza
Suite 5200
Chicago, Illinois 60603
(312) 558-7500

AFFIDAVIT

I, Robert Manning, being first duly sworn, do this 13th day March, 1986, state as follows:

1. I am Vice President - Division Operations for the Commonwealth Edison Company. My duties in that position include responsibility for customer relations throughout the Company's service territory.

2. The Company currently operates a business office at 5059 West Polk Street, Chicago, Illinois, which deals with customers in the area referred to as "Chicago Central." Although the Company intends to close that office, the office will remain open until at least the end of the year. The Polk Street office is an inadequate facility with poor parking. Closing the office will allow the Company to significantly reduce operating and maintenance expenses over the next several years. This move will not affect the size or response time of crews sent to customers' residences to handle problems with electric service.

3. The Company is taking a number of steps to ensure quality customer relations for Chicago Central customers after the Polk Street office is closed:

First, the Company plans to expand its bill payment facilities at its Chicago South and Chicago North offices. The Company will also increase parking facilities and other amenities not presently available at these locations. The Company also plans to expand its bill payment center capabilities in Maywood and downtown Chicago for customers who wish to pay their bills there.

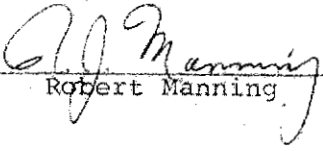
Second, the Company is reviewing its agent network in Chicago Central. This network will be expanded if necessary to meet the needs of those living near the Polk Street office. Additionally, the Company has established electronic link-ups with some agents to improve communications with agents and to enhance the services agents can provide customers.

Third, the Company recently installed a new, advanced telephone system in all seven division offices. This new, high technology system greatly enhances the Company's ability to deal with customer's concerns.

Fourth, the Company has designated a task force to study the needs of our customers regarding bill payment centers. The task force will offer suggestions as to any other necessary changes. Its report is due in September of this year.

4. Most of our customer relations activity takes place over the telephone, particularly at the Polk Street office, which is located in an area difficult to access. Thus, if anything, closing the Polk Street office and expanding other facilities will improve the quality of bill payment service presently received by Edison customers, while decreasing expenses. Our increased reliance on advanced technology benefits our customers.

SUBSCRIBED AND SWORN to
before me this 15th day
of March, 1986.


Robert Manning


NOTARY PUBLIC

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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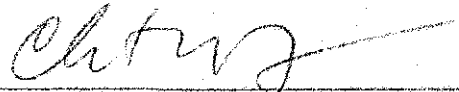
NOTICE OF FILING

TO: Edwin F. Mandel Legal Aid Clinic
Stefan H. Krieger
Steven J. Poplawski
Attorneys at Law
6020 S. University Avenue
Chicago, Illinois 60637

June Davis
Illinois Commerce Commission
100 W. Randolph Street
9th Floor
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this date we have
Federal Expressed for filing with the Illinois Commerce
Commission, 527 East Capitol Avenue, Springfield, Illinois
62706, the original and three copies of the accompanying
"Motion to Dismiss Complaint."

DATED this 13th day of March, 1986.



Christopher W. Flynn
One of the attorneys for
COMMONWEALTH EDISON COMPANY

ISHAM, LINCOLN & BEALE
Three First National Plaza
Chicago, IL 60602
(312) 558-7500

Carolyn J. Harper, being first duly sworn
on oath, deposes and says that she served copies of the
above Notice of Filing, together with the documents referred
to therein, upon the individuals listed in the above Notice
of Filing by enclosing true and correct copies thereof to be
delivered by messenger on the 13th day of March, 1986.

Carolyn J. Harper

SUBSCRIBED AND SWORN to
before me this 13th day
of March, 1986.

James R. Marsh
NOTARY PUBLIC

My Commission Expires January 12, 1991